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REGISTRATION OF LAND TITLES.

IT is proposed in this paper to consider some of the advantages and disadvantages of the older system of no registration, the later system of registering the instruments of conveyance, and the latest system of making the title depend entirely on a recorded adjudication that it is thus and so, which absolutely displaces all former titles, adjudicated or otherwise. It is also proposed to consider some of the reasons why the older systems persist.

No registration is the natural system, exists everywhere, probably, till displaced by statute, and has until very recently continued in most parts of England, each purchaser relying largely on the possession by the grantor of the prior assurances of title.

The system of recording the title deeds, and making neglect to do so postpone the negligent party to any subsequent purchaser in good faith from the same grantor, has been the system in vogue in this country from the earliest times; and now in the older parts of the country, especially in the larger cities, a proper inspection of the record often costs more than the land is worth; and as the record grows, such will tend to become the condition all over the country.

The third system, generally known as the Torrens system, originated in South Australia in 1858, and though adopted by statute in a number of the United States of America, is in all of them optional, and in none of them the predominating system. It would seem strange at first blush that a system which on the face of it appears to have such marked advantages over its predecessors, should make such slow progress against them. It will be worth while to examine this point a little before proceeding further. Why does not the recorded title immediately displace the practice of recording the evidences of title, or of making no record at all?

First of all there is the inertia. Until something is done the old system continues. Though there be statutory provision for a record title, owners of land will not take advantage of it till there is occasion for doing so, and they see the profit to them. It must be brought to their attention. There must be a need of making a transfer. And, most important of all, they must be persuaded that it is to their advantage to put it under the new system instead of leaving it under the old. Where the record is short it is usually cheaper and quicker to stick to the old system than to make the *initial* record under the new; and, of course, there can be nothing done under the new system till there is the initial record. It may be better in the end to have a record title; but "just for this time"

it will be cheaper and easier to stick to the old, and therefore many continue in the old way.

Then there are the beneficiaries of the old system. If you turn over a stone in the field, a lot of crooked wriggling creatures are distressed by being exposed to the light and deprived of their shelter. If you try to correct an old vice you find the same situation; and the recording system is no exception. When reformers attempt to obtain a law providing for the new system, the beneficiaries of the old order are on hand to block it by every means they can command, direct and indirect. They argue that it is unnecessary, impractical, unconstitutional, &c., &c. They are organized and interested, the other side is not. If they are unable by these means to stop the movement, they proceed to load down the law with amendments, to make it as dilatory, expensive, and complicated as possible; to restrict the field of its operation to a few counties, to make it depend on adoption in each county by special election, as in Illinois; or in addition to require the people first to tax themselves by a special election to erect a special building and fireproof vaults to keep the records, and vote to support a whole retinue of additional officers, as was done in Ontario; to load it down with a long list of large fees to attorneys, clerks, registers, sheriffs, publishers, abstract companies, and most unkindest cut of all, to require an abstract and a title insurance policy in at least the amount of the assessed value from the very abstract title guaranty companies the law was designed to displace, at a premium to be agreed upon *with the title guaranty company* in each particular case, as was done in New York.¹ By these and similar means they have been able in most cases to make the law unworkable and a dead letter. So successful were these handicaps in the New York law of 1908 that there had been only twenty-eight registrations in the whole state up to the summer of 1912.²

As an illustration of the extent to which the title guaranty companies of New York have gone to prevent use of the registration law, even as enacted, attention is called to the case of *Duffy v. Shirden*³ (1910) which they were able to get into only as attorneys for the owner of land bounding on the rear of the lot sought to be registered, and that only for six inches at one corner. Being thus in the case, they proceeded to raise all manner of technical objections, and nothing to the merits, and did not cease to harass the parties in interest till their ability in that direction had been ex-

¹ See article on New York law by Gilbert R. Hawes in 23 Green Bag, 58-65.

² New York Bar Assn. Rep. 1912, p. 75.

³ 139 N. Y. App. Div. 755, 136 id. 894 & 920.

hausted by three hearings and the denial of a motion for permission to take the case to the court of appeals. The case was finally decided against them on the ground that they had failed to show any financial interest entitling them to hearing in the case.

There is another advantage in these tactics. Whenever it is proposed to enact the reform in another state, the beneficiaries of the old system there are enabled to say two things: 1. There is no advantage in the system, for people do not use it where it is provided for by law. 2. If you just insist on enacting such a law, copy the law of the other state, with all these traps and fool provisions in it.

When it came to enacting a law for the Northwest Territories of Canada, where the land was all owned by the government and no abstract or title guaranty companies as yet existed, it was possible to get a fairly simple and workable system of adjudicated record title, as the only system; and in speaking of the working of the law there, Mr. Douglas J. THOM, of Regina, in his recent work (1912) on "THE CANADIAN TORRENS SYSTEM," says:

"It may safely be said that it would be hard, if not impossible, to find anyone who would revert to the old system of registration of deeds. The fact of the growth of the system in Manitoba, where it is optional, the 'old system' existing side by side, is striking evidence of the value of the Torrens system, especially where administered in a liberal spirit, untrammelled by unnecessary technicalities. The expense of bringing land under the 'new system' has proven a barrier, as against the increased stability of land under that system. It is not infrequent in contracts for a purchaser to stipulate for a Torrens title. This is notwithstanding the fact that, while Manitoba cannot show titles going back one hundred years, it has yet been in existence long enough to have produced titles of some complication and containing a very large number of instruments. The matter of expense in bringing land under the system is intimately connected with another feature, namely, the attitude of the officers of the system toward technical defects. If that attitude be that the minutest objection unsatisfied is a bar to the register, and the assurance fund back of him, from accepting any responsibility, then the system becomes expensive and burdensome, and to this attitude may probably be attributed the failure of the system to advance in some of the older jurisdictions. But if, as is the case in practice in Manitoba, the register is at liberty to substitute moral cer-

tainty for legal certainty where the latter is not available, acting on the view that the purpose of the act, and of the assurance fund, is to *facilitate* (sic) *the transfer of land*, in that case the system becomes correspondingly advantageous and popular.

"It is also true that the expense attached to operation under the system is higher than under the old system, especially in Saskatchewan and Alberta, where a percentage is payable to the assurance fund on each transfer, instead of only on the first bringing under the system, as in Manitoba. But laymen who have had experience with both systems are found to be the first to appreciate that for this additional cost, they obtain in greater proportion greater security of title on the one hand, and a little more easily disposed of on the other. From the view of the legal profession the time saved in searching and searching over again is inestimable. The other side of this is, of course, that a class of work for which considerable fees were collected under the old system is largely abolished under the new. But as in every other legal reform the general rule holds that in the long run the legal profession does not suffer in pocket, and certainly not in reputation, by the clearing away of 'old lumber' and making access to the real benefits of the law more easy. Certainly the legal profession of these provinces would never willingly go back to the old, wasteful, and wearisome system of searches back to the beginning on every successive transaction.

"Another objection is sometimes made that operations under the new system are slower than under the old. Here again is a question of a balance of conveniences. The culminating point of a sale transaction so familiar to conveyancing practitioners in the older provinces, when with all due form the solicitor for the vendor attended at the registry office with the deed, and at the same time the solicitor for the purchaser with the money, and having made final searches, deed and money were exchanged and the deed handed to the registrar, with the assurance that such title as there was was thereby crystalized, has no counterpart under the new system. No matter how completely up to date a registry office under the new system may be, the necessity for examination of instruments, having regard both to the form and contents of the instruments themselves, and so the state of the register at the moment of registration, renders it in the

nature of things impossible for the purchaser in such case to know he is getting what he is paying his money for. Therefore a practice of holding money in trust, either with solicitors or in banks, pending registration, as agreed on, has grown up. It is true it is slower, varying from a day or two to as high as three weeks, a delay in such latter case which should be attributed to a poorly managed office where it occurs, and not put down as a necessary accompaniment of the system. But in any case, so satisfactory are the results of the unimpeachable title felt to be when obtained, that, as in the case of the cost, it is felt that the results justify the small disadvantage, and suggestions of reform are directed, where necessary, to the administration of the system, not to its abolition."

Another glimpse of the practical working of a title registration system where it has had a fair chance side by side with the old system of deed registration is seen in an address before the New York State Bar Association by Mr. Justice Charles T. DAVIS, of the Massachusetts Land Court, from which the following extracts are quoted:⁴

"In the country counties it does cost more to have a title registered than to proceed under the old system, but in the metropolitan district it costs as a rule rather less. There are consequently very few petitions for registration in the country counties. Most of our work lies in the metropolitan district. I do not think, however, that this is due to the matter of expense, I think it is due to the fact that most country titles are still readily marketable under the recording system. * * *

"So far as the profession itself is concerned, the act at first met with very bitter and hostile opposition from quite a large portion of our conveyancing bar. I think that today, however, this opposition has been not only largely reduced, but almost eliminated. There are still one or two leading firms of conveyancers who are strenuous in their opposition to land registration, but, on the whole, the change of sentiment in so short a time has been quite surprising. Among those who today insist on registration of title in matters in which a very large amount of money is involved, or in which business corporations are acquiring or building plans, or estates are being purchased, as to which there is likely to

⁴ New York Bar Assn. Rep. (1908) pp. 400-418.

be a very rapid change in title, or who, under such circumstances advise their clients to register, will be found many who a very few years ago would have nothing to do with a registered title. The fact is that a conveyancer is seldom adequately paid for the work which he is obliged to do in the course of the examination of a title in the registry of deeds. He is compensated really more with regard to the amount of responsibility involved than in proportion to the actual labor or professional skill expended. We deal with registered land in exactly the same way as with unregistered land, except that the title passes by the act of registration.

"It is a popular fallacy that a layman can take a registration certificate of title and deal with it with perfect safety. He cannot. Counsel do not, it is true, have anywhere near as much work to do, and they incur nowhere near as much responsibility; but they do have to deal with the important phases of the matter immediately before them. A deed has to be properly drawn, instruments of trust considered, a mortgage transaction has to be properly attended to, and matters excepted from the certificate of title looked up before the title is passed into the registry of deeds. The elaborate labor of going over and over the same old ground and the same old title, which I suppose only those of us who have suffered under it can appreciate, and which has formed the chief cause of expense and annoyance, both to the profession and to our clients, has, however, been eliminated, and, on the whole, the compensation which can fairly and properly be charged for passing a registered title is, as a net result, larger than under the old system.

"In conclusion I want to say a word with regard to some of the objections to land registration. In the first place, it has had to encounter with us, and will always have to encounter wherever it is tried the great opposition of conservatism both in and out of the profession. * * * Another and still more formidable difficulty has been that of entire indifference on the part of the general public. In addition there are many purely theoretical objections. Gentlemen, I could think of endless theoretical objections to land registration besides those suggested and very well and fairly stated by Mr. PEGRAM. The only thing I can say in regard to them, however, is that as a practical matter of fact they do not exist. They do not happen. Land registration with us is speedy. Land registration with us is cheap. Land registration with us

is workable. The court is not a very large court. * * * The number of cases that we dispose of, however, compares more than favorably with the number of cases disposed of by any two sessions of our superior court. The character of our work has changed very much since the first act went into operation. At first we had very small and unimportant and usually defective titles. I should say that today the great bulk of our work is in titles involving a very considerable amount of money, and in which no real defect is present. We do not make the titles good. We simply adjudicate upon titles as they are presented to us finally proved. As to the great majority of titles as now existing and dealt with in Massachusetts, I think that there is no particular reason at the present time for their registration. I do not believe in a compulsory act. I should be exceedingly sorry to see ours made compulsory in any respect. * * *

"No re-examination of a registered title is ever made. The owner of a tract of registered land, after having found a purchaser, can place a mortgage for him, pass all the papers, and have the purchase money in his pocket all within twenty-four hours. This is the testimony of dealers who have handled hundreds of registered lots. Where a transaction happens to involve a very large sum of money, this saving of time and interest is of very real importance.

"The great, though somewhat general, objection urged against land registration appears to be that it is not wanted and is not used. * * * The growth of new business has thus far shown a moderate but absolutely steady increase, both in the number of applications filed and in the assessed valuation of the property registered. In 1899 it was \$626,000; in 1902, \$1,991,000; in 1907, \$3,643,000. People who once apply for registration of title come back again. No suit has ever been brought against the commonwealth, nor have I ever heard of any claim being suggested that anybody has ever been cut off from any right or interest in land during the ten years in which the land registration act has been in operation. We have registered the title to over \$20,000,000 worth of property at assessed valuations, and to a vastly larger amount of actual valuation as the same property stands today. We have some 8,000 instruments in existence in the metropolitan district alone. No claim, as I said, has been made, and no litigation of any kind has ever been brought that I have ever heard of by or against anybody because of

his title having been registered. Nobody has been involved in any of these many theoretical difficulties which we have just heard described because he has had a registered title. There has never been a suit, there has never been a petition, there has never been even a question as to the meaning of a single clause of the land registration act as drawn by Mr. HEMENWAY, a singular tribute to his professional skill."

These rather extended quotations have been thought justified at this point as declarations of experience from those who have lived under the registered title system where it has had a fair chance, and after expert investigation, speak of what they have seen and know, rather than as a reformer of what he hopes and dreams.

Another thing that has tremendous power in delaying the reform, both in preventing enactment of a statute to enable it, and in avoiding avail of the law where it exists, is the natural conservatism of land owners, and especially of their legal advisers. This conservatism and its influence are well illustrated by the remarks of The Lord Chief Justice of England, Lord COLERIDGE, after listening to a lecture on the new system and its operation in Australia, by Sir Robert TORRENS in 1872, as follows:

"I have never been able to perceive the obstacle to applying to land the system of transfer which answers so well when applied to shipping; but, as my learned brethren, one and all, have declared that to be impossible, I had become impressed with the belief that there must be something wrong in my intellect, as I failed to perceive the impossibility. The remarkably clear and logical paper which has been read by Sir Robert TORRENS relieves me from that painful impression; and the statistics of the successful working of his system in Australia amounts to a demonstration; so that the man who denies the practicability of applying it might as well deny that two and two make four."

In the United States there has been the further deterring doubt as to whether such a system would be or could be made legal under our written constitutions. Much was made of this objection for a number of years, especially by the beneficiaries of the old system. At first success seemed to attend these objections. The first Illinois law was held unconstitutional on the ground that it attempted to confer judicial powers on the registrar;⁵ and the first Ohio law was held unconstitutional on the same ground, and for the further reasons that a mere publication of notice "to whom it may concern,"

⁵ *People ex rel. Kern v. Chase* (1896), 165 Ill. 527, 46 N. E. 454.

the only way in which unknown claimants can be designated, was not due process of law to obtain jurisdiction to adjudicate on the title, and that the provision for an assurance fund was taking private property, not for public but for private use, and that without compensation, and on the other hand, the assumption that it would adequately compensate all whose titles might be cut off by the act was unwarranted, and even if it were adequate the property is not taken for public use.⁶

These objections if valid would seem to be insuperable; but soon the tide began to turn. The Illinois legislature immediately enacted a new law obviating the objections taken to the first; and the supreme court of the state sustained it, and declared the provision that the judgment should be a bar to all adverse claims after two years was valid as a statute of limitations.⁷

And whenever the Torrens acts of the other states have been attacked since in the state courts they have always been sustained.⁸

The first attempt to obtain an adjudication on the question in the Supreme Court of the United States failed, the judgment of the Supreme Judicial Court of Massachusetts sustaining their act being affirmed by the Supreme Court of the United States, and the writ of error dismissed, on the ground that the appellant had not shown any interest in the case entitling him to a hearing in court.⁹ But when the law passed in California to quiet the titles left without proof by the burning of the records at the time of the earthquake in 1908 came before the same court, the judges met the situation squarely and sustained the law against every objection, thus putting an end to discussion on that ground by the final decision of the court of last resort.¹⁰

It is a terrible indictment of our boasted jurisprudence if it is incapable of inventing or enduring any improvement on the system which has enabled title guaranty companies and abstract companies all over our land, and often several in the same city, to put by millions in surplus, after paying immense dividends, salaries, and clerical expenses, all extorted as a tax on land titles and transfers,

⁶ *State ex rel. Att. Gen. v. Guilbert* (1898), 56 Ohio St. 575, 47 N. E. 551, 38 L. R. A. 105, 60 Am. St. Rep. 756.

⁷ *People ex rel. Deneen v. Simon* (1898), 176 Ill. 165, 52 N. E. 910, 44 L. R. A. 801, 68 Am. St. Rep. 175.

⁸ *Tyler v. Judges of the Court of Registration* (1900), 175 Mass. 71, 55 N. E. 812, 51 L. R. A. 433; *State v. Westfall* (1902), 85 Minn. 437, 89 N. W. 175, 57 L. R. A. 297; *Robinson v. Kerrigan* (1907), 151 Cal. 40, 90 Pac. 129; *Baart v. Martin* (1906), 108 Minn. 197, 108 N. W. 945; *People ex rel. Smith v. Crissman* (1907), 41 Colo. 450, 92 Pac. 949.

⁹ *Tyler v. Judges* (1900), 179 U. S. 505, 21 Sup. Ct. 206.

¹⁰ *American Land Co. v. Zeiss* (1910), 219 U. S. 47, 31 Sup. Ct. 200.

for what has been somewhat sarcastically put as insuring against everything but loss. If any man thinks it an exaggeration to say there is no real protection in a title guaranty policy let him read one through and ponder on the exceptions and limitations.

But whatever influence in preventing the establishment of a system of recorded titles has been exercised by the public inertia, lack of occasion for acting, interested opposition, labor and expense of making the first move, and natural conservatism of lawyers and land owners, it is believed that the one great deterring force that has stood in the way of the establishment of a secure system of land titles, has been the failure of lawyers and laity to realize that a secure title under either of the old systems is an absolute impossibility, regardless of any care or cost that may be expended in preliminary investigation, abstract, title insurance, legal counsel, and gossip with the old ladies of the vicinity. The only thing that makes the system endurable is the real, immovable, indestructable, and visible nature of the land itself. The fact is that the path of the searcher for a safe title to land under either of the old systems is beset by more traps, sirens, harpies, and temptations than ever plagued the wandering Ulysses, the faithful Pilgrim, or the investor in gilt edged securities. To point out a few of these pit-falls is the principal purpose of this article. It is not designed to comment on the mistakes arising from improper interpretation of the recorded instruments, or from failure to make proper examination of them, but merely to show some of the dangers the record does not guard against.

It would be too long to enumerate, and very difficult for the imagination to conceive, the catalogue of pitfalls in the path of the man relying on an abstract and an examination of the public records under the instrument-record system to determine who owns any particular piece of land. But for our purposes a few common illustrations lying ready at hand will suffice. Let the reader remember the list increases in arithmetical ratio as the record lengthens. Multiply the following list by the number of instruments in the abstract, and then remember that the list is not complete but contains only a few illustrations. The purchaser gets no title unless his grantor had it or was in a position to pass it to the grantee as a bonafide purchaser; and the grantor appearing of record to have absolute title neither has it nor ability to pass it to a bonafide purchaser if anywhere in any of the links of the chain of title, in any of the preceding transfers, any of the following existed; unless the defect has been cured by adverse possession, of which later :

1. If any grantor, though of the same name, was not the same person as the prior grantee.

2. If persons conveying as heirs of a prior grantee were not such in fact; for example, they may be his children, but illegitimate because he had a prior spouse living, though perhaps never heard of by the children themselves, nor by anyone in the country where the land is situated, even though deceased had lived there all his life. The prior marriage may have been secret and the cohabitation very short.

3. If any grantor left an unprobated will. Conveyance by testator's heirs passes no title against the devisee; and the will may turn up and be probated and the land taken by the devisee after the supposed title had passed through a long chain of bonafide purchasers, and after a lapse of generations, and even after the property had been condemned by eminent domain against such supposed owner.¹¹

4. If any of the instruments in the chain were forgeries. The original is not kept on record. There is no possibility of determining by examining the record whether all or any of the instruments are genuine, nor has the buyer necessarily any means of access to the original. The notary's acknowledgment may be genuine and bonafide and the instrument a forgery, as has happened when the forger has presented the deed with the acknowledgment form all filled out ready to sign, and has hurriedly presented it to the notary for signature, the notary thinking he was taking the acknowledgment of the forger. Under the statutes of Ontario the original instrument is retained by the recorder, and then in case of question as to forgery there is something to look to to determine the fact, and the instrument is surely in safer keeping for everybody concerned afterwards than in the hands of private parties, exposed to fire and loss. But with us not so.

5. If the property was a homestead at the time of any of the transfers and the wife was not a party and separately acknowledged the deed it is void in several states. Whether it was a homestead or not no examination of the record will disclose. It may purport to be acknowledged and signed by the wife, but if the wife was in fact some other person the deed is still void. Who is in fact wife depends on a marriage, and which marriage was first, and whether there was at that time a living spouse, and many other things not capable of being ascertained by inspecting the record, interrogating

¹¹ *Haddock v. Boston & Maine Ry. Co.*, 146 Mass. 155, 15 N. E. 495; *Curral v. Villars*, 72 Fed. 330.

the grantor, talking with the neighbors, nor in any other certain way. It may be discovered by accident.^{11a}

6. And if, in such cases, the person taking the acknowledgement was not a notary, or was for any other reason incompetent, the deed is absolutely void. As if he was a party in interest under the deed, though that fact did not appear on its face, and was not discoverable by any means at the disposal of a person inspecting the record; for example, the notary was a stockholder of the corporation grantee.¹²

7. Likewise if the wife was insane in such case, though she in fact joined in the conveyance and made acknowledgment of it, the instrument is absolutely void. A purchaser in reliance on the record which gave him no means of ascertaining the fact is not protected.¹³

8. Where the instrument is made by a woman, it may be she was married, though the fact does not appear on the deed, and is not capable of discovery by inquiry in the vicinity; yet, since married women's deeds were void except by force of statute, her deed not complying with the statute is void, though the fact does not appear of record; and the bonafide purchaser would get no title.¹⁴

9. Though one purchase direct from the patentee from the government, and there are no other instruments of record, he gets no title if the government had made a prior patent or grant, for these are good without being recorded.¹⁵

10. If the instrument was once well recorded the title of the holder under it is not affected by the subsequent loss, destruction, or theft of the record; and purchasers thinking there is no record, because none can be found, are not protected though they act after due search.¹⁶

11. If a deed is recorded in the county where the land then was situated, the holder under it is protected without further record, though such land was included in the county only for a few days, and public records do not show how or when the county line was changed, and others in ignorance of the record and county history purchased in good faith.¹⁷

^{11a} Brewster on Conveyancing, § 392, and cases cited.

¹² Brewster on Conveyancing, §§ 282, 288 and cases cited.

¹³ Brewster on Conveyancing, § 393; *Thompson v. New England Mort. Co.*, 110 Ala. 400, 18 So. 315, 55 Am. St. Rep. 29.

¹⁴ Brewster on Conveyancing, § 264.

¹⁵ *Moran v. Palmer*, 13 Mich. 367; *Sands v. Davis*, 40 Mich. 14; *Rogers Locomotive Wks. v. Am. Em. Co.*, 164 U. S. 559, 17 Sup. Ct. 188.

¹⁶ *Thomas v. Hanson*, 59 Minn. 274, 61 N. W. 135.

¹⁷ *Stebbins v. Duncan*, 108 U. S. 32, 2 Sup. Ct. 313; *Koerper v. St. Paul & N. Ry.*, 40 Minn. 132, 41 N. W. 656.

12. If title is acquired from the record owner by adverse possession, such paramount title by adverse possession does not appear of record; and the record, instead of leading the searcher in the right direction misleads him. Suppose the holder of such adverse title leaves the country, and the land lies open common for a generation, till no one in the country can remember the adverse possessor. The most careful search would not reveal the real owner, who would prevail over one relying on the record in purchasing.¹⁸

13. At the common law dedication could be made by parol, and the statutes providing for dedication by deed are held to be cumulative. If a dedication is made by parol, of course it does not appear of record. One buying after due search relying in good faith on the record, might later discover he had bought the public park from someone who had no interest in it.¹⁹

14. Partition may be made by parol to this day. One buying what appears of record to be a part interest may get nothing, because in parol partition it had been given to another.²⁰

15. A deed duly signed and acknowledged is void till delivery, a fact not determined by anything on the deed, nor discoverable from the record. If any of the recorded instruments were not delivered, the purchasers relying on the record, though for value, gets no title.²¹

16. If adjoining owners have agreed on boundries by setting monuments, purchasers relying on the records in ignorance of the placing of any such monuments are bound by them though they certainly were misplaced.²² And the same is true of many other rights by estoppel in pais, not appearing of record, but binding on purchasers in good faith.

17. Liens on land for labor and material often relate back for some time before the claim appears in any public office, sometimes going back two or three years; as for example under a statute requiring such claims of lien to be filed within sixty days after the *last* material was furnished or *last* work was done.

18. Rights of persons in possession of the land or any part of it are protected without recording their title deeds. Persons purchasing in reliance on the records, without careful scrutiny as to actual possession of the land do so at their peril; and often the

¹⁸ McGregor v. Thompson, 7 Tex. Civ. App. 32, 26 S. W. 649; Thomas v. Burnett, 128 Ill. 37, 21 N. E. 352.

¹⁹ Godfrey v. Alton, 12 Ill. 29; 52 Am. Dec. 476; Grandville v. Jenison, 84 Ill. 54, 47 N. W. 600.

²⁰ Byers v. Byers, 183 Pa. 509, 38 Atl. 1027, 39 L. R. A. 537, 63 Am. St. Rep. 765.

²¹ Stone v. French, 37 Kan. 145, 1 Am. St. Rep. 237, 14 Pac. 237; Brewster on Conveyancing, § 306, and cases cited.

²² Hall v. Eaton, 139 Mass. 217.

possession is such as not to be noticed, and yet sufficient to protect the rights of the possessor if proper inquiry would have discovered him.

19. If one is put to election by deed or will conveying land in different states or countries, the instrument being void by the law of one state or country and valid by the law of the other, title may be made to pass by an instrument apparently void on its face and on the face of the record, or not to pass by a deed valid on its face, by the mere act of election of the person subject to it, which fact might be very difficult to ascertain; but the election being once made is binding to the person electing, his heirs and assigns.²³

The only thing that makes our old system of instrument registration endurable is the healing balm of the statute of limitations; but on this head also a word of caution is needed. The statute does not begin to run till a right is invaded. Therefore, if the land is wild and unoccupied, as much of our land is, the statute never operates. Again, if the right is merely to minerals, with right to use the surface to extract them, no possession of the surface, even for a hundred years, would set the statute running to bar the outstanding title to the minerals. The owner of the minerals could sue only when someone attempts to remove the minerals, then the statute would begin to run.²⁴

Again, no adverse possession during the life of a tenant for life will operate to bar the remainderman, for the remainderman has no right to sue till his right of possession is disturbed. This rule applies whether the person setting up the title by adverse possession claims through the life tenant who has conveyed in fee in denial of any right of remainder,²⁵ or whether he claims against all persons, including the life-tenant and remainderman.²⁶

In these pages no attempt has been made to give a complete catalogue of the decided cases on any point, because the law on most of them is undisputed, and the propositions are generally so manifest and plain that any citation of authority is almost superfluous. Moreover, most of the propositions stated are put by way of argument or illustration, and not intended to imply that there are not

²³ *Pomeroy Eq. Jur.* §§ 484, 514; *Broadwell v. Merritt*, 87 Mo. 95; *Doty v. Barnard*, 92 Tex. 104.

²⁴ *Delaware Canal Co. v. Hughes*, 183 Pa. 66, 38 Atl. 568, 38 L. R. A. 826, 63 Am. St. Rep. 743.

²⁵ *Lumley v. Haggerty*, 110 Mich. 552, 68 N. W. 243, 64 Am. St. Rep. 364; *Porter v. Osmun*, 135 Mich. 361, 98 N. W. 859.

²⁶ *Lewis v. Bernhart*, 145 U. S. 73, 12 Sup. Ct. 772; *Gindret v. Western Ry. Co.*, 96 Ala. 162, 11 So. 372, 19 L. R. A. 839; *Baker v. Oakwood*, 123 N. Y. 16, 25 N. E. 312, 10 L. R. A. 287.

many other illustrations of the same truth, many of which will, no doubt, occur to the reader.

From the foregoing discussion it is apparent that there is no safety or security in a land title depending on record of the instruments of transfer, a complete abstract, a policy of title insurance, and counsel of land-title experts thereon. It is also apparent that a system of adjudicated title by the so-called Torrens System, is practical, workable, satisfactory, and increasing in favor, where given a fair opportunity. And it is submitted that this is the only system yet devised whereby titles to land can be made open to the public, easily and cheaply ascertainable, and safe and secure to the purchaser. Its chief merit is not its cheapness, but its security, though it does have the additional merit lacking under the old system, of not dragging a lengthening chain of expense, obscurity, doubt, and danger with every transfer.

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